

DEPARTMENT OF BUSINESS OVERSIGHT*Ensuring a Fair and Secure Financial Services Marketplace for all Californians*

Jan Lynn Owen
Commissioner of Business Oversight

April 5, 2018

Re: _____ – Interpretive Opinion Request

Dear _____:

Thank you for your letter to the Commissioner of Business Oversight, dated February 21, 2017, on behalf of _____ (“_____”). As Counsel for the Legal Division, I have been asked to respond. You request confirmation from the Department of Business Oversight (“Department”) that a payment processing service offered by _____ (“the Service”) satisfies the requirements of the agent of payee exemption under the California Money Transmission Act (“MTA;” Fin. Code § 2000 et seq.).

BACKGROUND

_____ represents that it will provide payment processing services to payment and commerce platforms, which will be used by merchants and customers of merchants. You explain that merchants will integrate payment or commerce platforms into the merchant’s point-of-sale terminals, mobile applications or websites. Customers of these merchants will then enroll with the payment system or platform to make a purchase from the merchant. You state that _____ intends to contract with merchants to provide merchants with settlement and processing services for payments made by the customers of merchants through these payment or commerce platforms. You note that some of the payment and commerce platforms are affiliates of _____. You have asked for the Department to confirm that this service satisfies the agent of payee exemption from MTA licensing requirements.

An entity that engages in money transmission in California must obtain a license from the Department, unless an exemption applies. (Fin. Code § 2030.) Financial Code section 2010,

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subdivision (l) provides an exemption from the MTA for transactions where the recipient of money or monetary value is an agent of the payee, provided that the agent and payee have a preexisting written contract which establishes that delivery of money or monetary value to the agent satisfies the payor's obligation to the payee. "Payee" is defined as the provider of goods or services, to whom payment of money is owed, and "payor" is defined as the recipient of goods or services, who owes payment to the payee.

You argue that the service offered by _____ satisfies the agent of payee exemption, and ask the Department to confirm your interpretation of the agent of payee exemption.

ANALYSIS

The Department intends to introduce a proposed rulemaking concerning the agent of payee exemption in the near future. While the Department engages in that process, we decline to opine on the applicability of the exemption to _____'s proposed payment activity. However, based on the information _____ has provided, the Department will not require _____ to be licensed under the MTA while the rulemaking is pending.

The temporary dispensation we are granting to _____, however, is based on two assumptions. If either assumption is incorrect, then that dispensation would not apply.

The first assumption is that the payment or commerce platforms that precede _____ in the flow of funds are in compliance with their own licensing obligations. To the extent that those platforms are neither licensed nor exempt from licensing, then _____ may not perform transmission services for or with such companies. (Fin. Code, § 2062.)

The second assumption is that the payment or commerce platforms that precede _____ in the flow of funds are not themselves relying on the agent of payee exemption. The contract you submitted appears to permit a payment model in which both _____ and a platform provider act as agents of the merchant. Under that model, payment would flow from the customer to the platform provider to _____ to the merchant. The language of Section 2010(l) requires that payment to an agent satisfy the payor's obligation to the payee. The payor's obligation cannot be extinguished twice; if payment to the platform provider satisfies the customer's obligation to the merchant, then payment to _____ cannot also satisfy the customer's obligation to the merchant. The agent of payee exemption is not available to _____ if both _____ and the platform provider are appointed agents of the payee. This would be true regardless of the outcome of the proposed rulemaking mentioned above.

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The conclusions expressed in this letter are based on the facts and circumstances as presented by you in your request to the Department. The Department reserves the right to revisit any conclusions under other facts or changed circumstances.

Please contact the undersigned at _____ should you have any questions.

Sincerely,

Jan Lynn Owen
Commissioner of Business Oversight

By

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Counsel